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Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

Germany

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document was not edited before being sent to the United Nations translation services.

The Federal Republic of Germany's response to the recommendations set out by the UN Human Rights Council in the Universal Periodic Review on 25 April 2013

124.1–124.13, 124.15–124.17, 124.185

Not accepted regarding the ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Fundamental human rights are enshrined in the United Nations Civil and Social Rights Covenants. These rights apply directly to all migrants in Germany. Moreover the Convention uses the term “migrant worker” in a way that includes irregular migrants. This is not compatible with German law.

124.11, 124.12, 124.13, 124.18–124.21

Accepted in principle. The Government is assessing the accession to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. A concrete date for signing and ratifying the Optional Protocol cannot be given.

124.12

Accepted regarding the ratification of Protocol No. 12 to the European Convention on Human Rights. Nevertheless the German Government wants to hear the position adopted by the European Court of Human Rights on the application of the provisions of Protocol No. 12 before ratifying.

124.13

Accepted regarding Council of Europe Convention on preventing and combating violence against women and domestic violence.

124.14

Accepted in principle. The German Government is closely examining whether to make reservations to international human rights treaties. As for the withdrawal of reservations made to the International Covenant on Civil and Political Rights and the Optional Protocol thereto, the Federal Government still considers these to be necessary.

124.15, 124.22, 124.23, 124.30

Accepted. Before ratifying the United Nations Convention against Corruption, an adaptation of the legislation regarding the criminal offence of bribery of members of parliament is needed. A corresponding draft legislative bill should be submitted by members of the German Bundestag.

124.24

Accepted.

124.25

Rejected. School education falls under the remit of the Länder (federal states) and not the Federal Government. Therefore in this respect an expansion of the General Equal Treatment Act (AGG) is not possible. Issues pertaining to equal access to vocational training and advanced professional training are already covered by the AGG. An independent body, the Federal Anti-Discrimination Agency, is in place to handle complaints regarding discrimination in this field.

124.26

Accepted. The Convention entered into force for Germany on 10 July 2013.

124.27

Accepted. Under German law the different forms of torture, as defined in Article 1, are already fully classed as criminal offences in the Code of Crimes against International Law, both as a crime against humanity (section 7 (1), number 5), and as a war crime (section 8 (1), number 3).

124.28

Accepted. Legal regulations and their implementation already comply with international standards and norms.

124.29

Accepted. The General Equal Treatment Act (AGG) of 2006 already prohibits gender-based discrimination and thus offers women legal protection against discrimination.

124.31

Accepted. Applicable law already provides for “extended privacy protection” in the sphere of doctor-patient confidentiality, which exempts healthcare workers from reporting obligations pursuant to residence law.

124.32

Accepted. Applicable national law already complies with the Convention on the Rights of the Child.

124.33, 124.41

Accepted. German law already guarantees appropriate prosecution of racially motivated crimes. “The motives and aims of the offender” as well as “the state of mind which may be inferred from the crime” are taken into consideration when determining the sentence.

124.34

Accepted. German criminal law already sanctions the different forms of enforced disappearance. Still, the Government is currently examining, together with civil society, if and to what extent an amendment to criminal law could be beneficial.

124.35

Accepted. Legislation regarding both distribution of property upon divorce and alimony already complies with the CEDAW Convention.

124.36

Accepted. In 1994 the requirement for equality pursuant to Article 3 (2) of the Basic Law was expressly clarified by the addition of sentence 2 to Article 3 (2) of the Basic Law (BVerfGE 109, 64, 89): “The state shall promote the actual implementation of equal rights for women and men and take steps to eliminate disadvantages that now exist.” This obligation already finds expression in numerous laws, such as in the General Equal Treatment Act (AGG).

124.37

Accepted. The Criminal Code contains a clear definition of child pornography.

124.38

Accepted. National legislation pertaining to foreigners and asylum procedures already complies with the Convention on the Rights of the Child.

124.39, 124.40, 124.109, 124.119, 124.172

No accepted. With the so-called “Headscarf Judgement” of 24 September 2003, the Federal Constitutional Court ruled that the Basic Law offers, in principle, the possibility to ban religious symbols and religious clothing in public schools, but that it is the prerogative of Land legislatures to strike an acceptable balance between the conflicting demands of teachers’ freedom of religion and belief, the obligation of the state to preserve neutrality in ideology and religion, parents’ right of education and pupils’ negative religious freedom. Eight Länder have – to varying degrees – elaborated legal provisions banning teachers in public schools from wearing religious symbols.

124.42

Accepted.

124.43

Accepted.

124.44, 124.46

Not accepted. Germany has an extensive system of legal protection and complaints mechanisms at federal and state level. An expansion is not necessary.

124.45

Accepted in part. From the Government’s point of view the mandate of the Federal Anti-Discrimination Agency (ADS) is sufficient. The ADS was set up in 2006 and equipped with the resources needed for the initial phase of its establishment. An evaluation established that additional posts were required.

124.47

Accepted.

124.48, 124.53, 124.54

Accepted.

124.49, 124.146

Accepted. Already now it is possible to subject decisions made by the Youth Welfare Office to judicial review.

124.50

Accepted. The Federal Government’s action plan of October 2012 is still being implemented.

124.51

Accepted.

124.52

Accepted.

124.55

Not accepted. The exceptional circumstances pertaining to the acceptance of citizens' multiple nationality on naturalisation in specific cases do not usually apply to Turkish nationals.

124.56

Accepted. Germany and Turkey are engaged in constant dialogue on issues relating to Turkish or German communities in both countries.

124.57

Accepted.

124.58

Accepted.

124.59

Accepted.

124.60

Accepted. The indivisibility, universality and close interdependence of all human rights, as well as the equal status of social, economic and cultural rights with civil and political rights in the eyes of the law is guaranteed in legislation and judicial practice.

124.61

Accepted.

124.62

Accepted.

124.63

Accepted. For years, Germany has extended a standing invitation to all special procedures of the Human Rights Council.

124.64

Accepted. Germany submitted the report on time, in January 2013.

124.65

Accepted.

124.66

Accepted.

124.67

Accepted.

124.68, 124.69, 124.70

Accepted.

124.71, 124.72

Accepted.

124.73

Accepted.

124.74, 124.149, 124.155, 124.156, 124.157, 124.159, 124.160, 124.163

Accepted. Policy approaches include ensuring women have development and career opportunities, promoting equal pay, enhancing the compatibility of family and work life, fostering employment subject to social insurance contributions and providing a secure livelihood instead of insecure or atypical work, improving control over working hours (of mothers and fathers) and improving corporate culture towards, inter alia, more flexible working hours.

124.75

Accepted.

124.76

Accepted.

124.77, 124.129

Accepted. The measures outlined in the National Action Plan to Fight Racism are implemented and further developed by the Federal Government together with the Länder and municipalities, and constitute a comprehensive strategy. For the police to engage in enforcement with persons solely on the basis of their physical appearance is illegal and therefore not practised. Police training includes comprehensive measures geared towards protecting people from discriminatory police practices.

124.78

Accepted.

124.79, 124.101, 124.102, 124.103, 124.104, 124.105, 124.106, 124.107, 124.117, 124.121, 124.122, 124.131

Accepted. An attack on human dignity through insult, malicious denigration or slander of a national, racial, religious or ethnic group, section of the population or individual due to their belonging to such a group or section of the population, as well as incitement to hatred, calls for violence or arbitrary action against them, is already subject to criminal prosecution as a hate crime. This also applies to the dissemination of such remarks on the Internet.

124.80

Accepted.

124.81

Accepted.

124.82

Accepted.

124.83

Accepted. Legislation is subject to constant examination to ensure that all forms of racially motivated offences can be adequately prosecuted and punished.

124.84

Accepted.

124.85

Accepted.

124.86

Accepted.

124.87

Accepted. The National Action Plan to Fight Racism, which is already in place, represents a comprehensive strategy to combat racism.

124.88, 124.99

Accepted. Action is already consistently taken against the dissemination of criminally relevant material on the Internet or in the media.

124.89

Accepted. The German Government implements ongoing programmes to counter racism and discrimination.

124.90

Accepted.

124.91

Accepted. CERD obligations are applicable law in Germany. This means all forms of discrimination which fall under the definition of racial discrimination in Article 1 of the Convention are covered by German law.

124.92 to 98, 124.100, 124.101

Accepted.

124.108

Accepted.

124.110, 124.111

Accepted. It is already illegal for the police to engage in enforcement measures with persons solely on the basis of their physical appearance. All phases of police training include comprehensive measures geared towards protecting people from discriminatory police practices.

124.112

Accepted. The General Equal Treatment Act already prohibits discrimination on the grounds of religion.

124.113

Accepted.

124.114

Accepted.

124.115, 124.118, 124.189

Accepted. Promoting the integration of migrants is an ongoing task which aims to promote social cohesion and prevent discrimination. Breaking down stereotypes is part of this effort. In this regard, the Federal Agency for Civic Education plays a key role at the federal level.

124.116, 124.193

Accepted. Improving the educational opportunities of children and young persons with a migrant background is a special focus of education policy.

124.119

Accepted.

124.120, 124.179

Accepted.

124.123

Accepted. The current German legal system fully protects life. In particular the Federal Government considers sections 218 et seqq. of the Criminal Code to represent a balanced approach.

124.124

Accepted.

124.125

Accepted. It is the standard practice of German higher courts (including the Federal Constitutional Court) to reject extradition if there is a danger of torture or treatment which would violate human rights. Deporting someone in cases where there is a concrete threat of such danger is not permitted under German law.

124.126

Accepted.

124.127, 124.128 and 124.130

Not accepted. Law enforcement agencies and criminal courts do already guarantee independent investigation. There is a standardised procedure for dealing with complaints of alleged official misconduct in all authorities and agencies.

124.130

The recommendation must be rejected.

The German Government does not consider mandatory identification for Federal Police officers to be necessary. The Federal Police has not received any information suggesting that an investigation into Federal Police officers could not be concluded due to the lack of an individual identification. With regard to police officer identification the Länder act in their own authority.

In order to fulfil its responsibilities as laid out in the Convention against Torture, Germany has improved transparency in keeping with the rule of law by making more data available on offences committed by police and correction officers.

124.131

Accepted. In light of historical experiences in Germany and international commitments, high priority is attached to both the prosecution of crimes of a xenophobic or racist nature and those targeting members of a religious community as well as activities to prevent such crimes.

124.132

Accepted.

124.133

Accepted.

124.134, 124.136

Recommendation rejected. German law already contains numerous regulations which guarantee the criminal prosecution of the different forms of domestic abuse. Therefore the creation of a distinct crime is not necessary.

124.135

Accepted.

124.137

Accepted.

124.138

Accepted.

124.139, 124.140, 124.147

Accepted.

124.141

Accepted.

124.142

Accepted.

124.143

Accepted.

124.144

Accepted. The criminal justice system already considers preventive detention to be a last resort, thus each individual case must be carefully reviewed in order to ensure that the applicable stringent requirements are met.

124.145

Accepted. It is already possible to have decisions taken by the Youth Welfare Office examined by a court to verify their compliance with applicable German law and also with the European Court of Human Rights' rulings with regard to the provisions of the European Convention on Human Rights.

124.148

Accepted.

124.150

Recommendation rejected. The Basic Law states that freedom of conscience must be taken into consideration in all spheres. This does not mean, however, that this always takes precedence.

124.151

Accepted. Freedom of religion or belief is already comprehensively protected in Germany. This also involves preventive measures.

124.152

Accepted. Germany attaches great importance to freedom of opinion or assembly as well as to the ban on torture and abuse.

124.153

Accepted. The General Equal Treatment Act already prohibits discrimination on the grounds of age.

124.154

Accepted. The General Equal Treatment Act already prohibits discrimination on the grounds of race or ethnic background.

124.158, 124.159

Accepted. Since 1 August 2013 childcare for all children from the age of one year is a legal entitlement.

124.161

Accepted. In Germany the General Equal Treatment Act prohibits discrimination on the basis of gender (sections 1, 7 (1)) and obliges employers to prevent and put an end to discrimination (section 12). The Federal Government can only directly intervene with regard to wage formation in the public sector. However, it has provided companies with the analysis programme "Logib-D that they can use to investigate wage disparities, identify determining factors for these disparities and develop ideas on how to overcome them.

124.162

Accepted. Experts' reports have revealed an adjusted pay gap of 7%. The experts interpreted this value as the upper limit, as the adjusted gender pay gap could prove to be lower if further factors which can affect pay – such as data on the real extent of work experience and career interruptions – had been available for analysis.

124.164

Accepted. The Federal Government has promoted Equal Pay Day since 2008. In 2013 an Equal Pay Day Forum started to make the issue of equal pay visible throughout the year, including at the federal level.

124.165

Accepted. In Germany families enjoy special protection. This protection covers families in all their diverse forms.

124.166

Accepted.

124.167

Accepted. In Germany boys and girls already have fully equal educational opportunities. For many years the Federal Government has been supporting social partners in how to apply the fundamental principle of equal pay for equal work and work of equal value with the manual "Fair Pay – Equal Pay for Women and Men", published in 2007.

124.168

Accepted.

124.169

Accepted. Human rights education is embedded in state school curriculums. It is constantly reviewed, as is human rights basic and further training in the Federal Police. Additional monitoring is not necessary.

124.170

Accepted.

124.171

Accepted.

124.173

Accepted.

124.174

Accepted.

124.175

Accepted. The laws of equality for the disabled at the federal and state levels contain provisions on ensuring comprehensive accessibility in the public sector. In the private sector the Law on Equality of Opportunity for the Disabled (BGG) established an instrument to help set targets. Target agreements on ensuring comprehensive accessibility in the private sector should be concluded by organisations of people with disabilities and companies or business associations in their relevant industries. An evaluation of the BGG is currently reviewing whether or not the instrument of target agreements has proved to be useful.

124.176

Accepted. Germany will undertake all efforts to provide women who are victims of violence with barrier-free access to protection and support mechanisms.

124.177

Accepted.

124.178

Accepted.

124.179, 124.180, 124.181

Accepted. Religious and ethnic minorities, particularly women and children, are already protected in Germany.

124.182

Accepted. At the German Islam Conference in particular, representatives of the state and Muslims living in Germany cooperate to facilitate the integration of the around four million Muslims in Germany.

124.183, 124.184, 124.190, 124.191, 124.194

Accepted. Both the Basic Law as well as regulations pursuant to ordinary law provide for full protection of the rights of migrants and in particular also the rights of migrants' children. This legal protection is consistently upheld in the application of the law and court rulings.

124.186, 124.187

The recommendations are accepted in part. The Residence Act and thus also the punishment of illegal residency provide for measured management of immigration in Germany. Detention pending deportation is only resorted to when necessary, and for the shortest possible duration. The German authorities are legally bound to carry out deportations as swiftly as possible.

124.188

Accepted.

124.192

Accepted.

124.195, 124.196, 124.197

Accepted.

124.198, 124.199, 124.200

Accepted.
